

## **REMARKS**

Applicants respectfully request consideration of the subject application as amended herein. This Amendment is submitted in response to the Final Office Action mailed March 31, 2009. Claims 1-45 stand rejected. In this Amendment, claims 1, 30, 33, 39 and 42 have been amended. No claims have been canceled. No new matter has been added. Accordingly, claims 1-45 are presented for examination.

### **Double Patenting**

Claims 1, 30, 33, 39 and 42 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09/999,763 in view of Cusson et al. (International Publication No. WO 0063800, hereinafter "Cusson"). Applicants submitted a terminal disclaimer on June 1, 2009, with regards to copending application No. 09/999,763. Accordingly, Applicants respectfully request that the nonstatutory obviousness-type double patenting rejection be withdrawn.

### **Rejections Under 35 U.S.C. §112, First Paragraph**

Claims 1-45 have been rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. More specifically, the current Office Action stated that the language, "if said representation is not a new representation, wherein said representation is not sent to at least one second tier identification server if said representation is a new representation," of claim 1; "wherein said received representation is not sent to the at least one Second Tier identification server if said received representation is a new representation," of claim 30; "wherein if the representation is not similar to one of said previously received unidentified representation, the representation is not sent to said Tier N+1 server," of claim 33;

“wherein if the representation is not similar to the previously received unidentified representation, the representation is not sent to the Second Tier identification server,” of claim 39, and “wherein if the representation is not similar to the previously received unidentified representation the representation is not sent to the Second Tier identification server,” of claim 42 are not explicitly taught in the specification of the present application. The current Office Action therefore alleges that the aforementioned subject matter was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

Applicants respectfully traverse the rejection, and submit that the aforementioned subject matter is described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. As an initial matter, Applicants would like to remind the Examiner that “the subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verva*) in order for the disclosure to satisfy the description requirement.” (MPEP §2163.02, par. 3). The test for sufficiency of support is whether the disclosure of the application relied upon “reasonably conveys to the artisan that the inventor had possession at the time of the later claimed subject matter.” (MPEP §2163.02, par. 1).

In regards to one embodiment of the present invention, the present application states, “... it is determined whether a repeating work has been received. If an unidentified work has been received more than once, known as a super segment group, then the First Tier ID Server may send a super segment from the group to a Second Tier ID server for identification. In the aspect of Fig. 8, the Second Tier ID Server only attempts to identify detected super segments. In other words, only repeating segments are sent to the Second Tier ID Server for an identification attempt An unidentified work which has failed to be detected more than once is not sent to the

Second Tier ID Server for identification.” (detailed description of present application, page 27, lines 6-15; emphasis added). The cited passage conveys to one of ordinary skill in the art that the Applicants were in possession of the claimed subject matter. For example, one of ordinary skill in the art would understand, based on the cited passage, that the Applicants were in possession of the subject matter, “at least one First Tier identification server ... to send said representation to at least one Second Tier identification server if said representation is not a new representation, wherein said representation is not sent to the at least one Second Tier identification server if said representation is a new representation.”

Accordingly, Applicants respectfully request that the rejection under 35 U.S.C. §112, first paragraph be withdrawn.

#### **Rejections Under 35 U.S.C. § 112, Second Paragraph**

Claims 1-45 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, the Office Action states that the claims contain a negative limitation, “wherein said representation is not sent to at least one second tier identification server if said representation is a new representation,” which is not explicitly stated within the specification.

As a first matter, Applicants respectfully submit that the cited language is fully supported by the detailed description. As described above, the cited language is supported, for example, by page 27, lines 12-15 of the detailed description, which states in pertinent part, “only repeating segments are sent to the Second Tier ID Server for an identification attempt. An unidentified work which has failed to be detected more than once is not sent to the Second Tier ID Server for identification.” (Detailed description of Present Application, p. 27, lines 12-15). See also, page

21, lines 10-13 of the detailed description, which states, “[i]t is contemplated that the received work may comprise representations provided by an analysis module to an ID server as described above. In the discussion below, the terms segments and representations may be used interchangeably.” (Detailed description of Present Application, p. 21, lines 10-13). Applicants again respectfully remind the Examiner that “[t]he subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement.” (MPEP, 2163.02, par. 3). “The test for sufficiency of support in a parent application is whether the disclosure of the application relied upon ‘reasonably conveys to the artisan that the inventor had possession at the time of the later claimed subject matter.’” (MPEP, 2163.02, par.1). Applicants respectfully submit that the cited language of the detailed description would reasonably convey to an artisan that the inventors of the present invention had possession of the presently claimed subject matter.

As a second matter, Applicants respectfully remind the Examiner that “there is nothing inherently ambiguous or uncertain about a negative limitation. So long as the boundaries of the patent protection sought are set forth definitely, albeit negatively, the claim complies with the requirements of 35 U.S.C. §112, second paragraph.” (MPEP §2173.05(1), par. 1). The above cited passages of the detailed description for the present application, such as “only repeating segments are sent to the Second Tier ID Server for an identification attempt,” and “[a]n unidentified work which has failed to be detected more than once is not sent to the Second Tier ID Server for identification,” definitely set forth support for the negative claim limitations recited in the claims. Therefore, the claim limitations satisfy the requirements of U.S.C. § 112, second paragraph.

For the above reasons, the Applicants respectfully submit that the cited language is fully supported by the detailed description, and request that the rejection under U.S.C. § 112, second

paragraph, be withdrawn.

### **Rejections Under 35 U.S.C. § 102**

Claims 39, 41, 42, 44 and 45 are rejected under 35 U.S.C. §102(a) as being anticipated by AAPA. Examiner has interpreted the “if” statements of claims 39 and 42 as optional language. Therefore, Examiner has treated claims 39 and 42 as though the language following the “if” statements are not limitations of the claims. Claims 39 and 42 have been amended to replace each “if” clause with a “when” clause. Accordingly, Applicants respectfully submit that the claims can no longer be interpreted as not including the features that had previously followed the “if” statements.

With regards to claim 39 and its dependent claims, Applicants respectfully submit that the background section of the present application does not teach or suggest, “means for determining whether said representation is similar to a previously received unidentified representation based on comparing the received representation to a list of unidentified representations when said work is not identified, or means for adding the received representation to the list of unidentified representations when said representation is not similar to an unidentified representation in the list,” as recited in claim 39.

With regards to claim 42 and its dependent claims, Applicants respectfully submit that the background section of the present application does not teach or suggest, “when said representation is similar to the previously received unidentified representation, sending said received representation to a Second Tier Identification server for identification, wherein when the representation is not similar to the previously received unidentified representation, the representation is not sent to the Second Tier identification server,” as recited in claim 42.

Accordingly, Applicants respectfully submit that the rejection has been overcome, and

request that the rejection under 35 U.S.C. §102(a) be withdrawn.

### **Rejections Under 35 U.S.C. § 103**

Claims 1-30, 32, 33, 35 and 38 have been rejected under 35 U.S.C. §102(e) as being anticipated by Applicant Admitted Prior Art, (Background Invention, hereinafter “AAPA”), in view of Cusson, in further view of Patel et al. (U.S. Publication No. 2003/0051100, hereinafter “Patel”). Applicants respectfully submit that this rejection is improper. A claim is only anticipated by a prior art reference under 35 U.S.C. §102(e) if each of the features of the claim are disclosed in a single reference.

In the latest Office Action, Examiner stated that the limitation, “wherein said representation is not sent to the at least one Second Tier identification server if said representation is a new representation,” of claim 1 is not supported by the detailed description of the present application, and that the Examiner therefore is interpreting the claim language as meaning, “wherein if the representation is not similar to the previously received unidentified representation the representation is sent to the Second Tier Identification Server.” Applicants respectfully disagree with Examiner’s reading of the claim terms in claim 1. Under the Examiner’s interpretation of the language in claim 1, the representation is sent to the Second Tier Identification Server both when the representation is similar to a previously received unidentified representation (e.g., is not a new representation) and when the representation is not similar to a previously received unidentified representation (e.g., is a new representation). This interpretation directly contradicts the claim language, which recites, “at least one First Tier Identification Server ... to add the representation to the data record when the representation is a new representation, and to send said representation to at least one Second Tier Identification Server when said representation is not a new representation, **wherein said representation is not sent to**

**the at least one Second Tier Identification Server when said representation is a new representation.”** (emphasis added). Applicants respectfully request that the Examiner examine the claims as they are written.

The Examiner’s rejection is based on the premise that the claim language, “wherein said representation is not sent to the at least one Second Tier Identification Server when said representation is a new representation,” should be interpreted as “to send said representation to at least one Second Tier identification server if said representation is a new representation.” (See Office Action, 3/31/2009, page 4). Applicants respectfully submit that when the clear meaning of the claim language is applied, the combination of AAPA, Cusson and Patel fails to teach or suggest all of the limitations of independent claim 1, as discussed below.

Cusson teaches a system that includes a cache database and a source database, wherein the cache database contains a portion of the data contained in the source database. (Cusson, col. 5, lines 44-48). In Cusson, a query is first presented to the cache database. If the cache database does not include data identified in the query, the query is sent to the source database. (Cusson, col. 5, lines 53-60). Cusson teaches that if the data identified in the query is not in the cache database, the query **must be run on the source database**. (Cusson, col. 9, lines 14-19). Therefore, in Cusson if the data is not in the cache database the **query is always sent to the source database**. Cusson does not teach determining whether the query is a new query if the data identified in the query is not in the cache. Nor does Cusson teach that the query is **not sent** to the source database when the query is a new query. In contrast, claim 1 recites, “at least one First Tier identification server ... to add the representation to the data record when the representation is a new representation, and to send said representation to at least one Second Tier identification server when said representation is not a new representation, wherein said representation is not sent to the at least one Second Tier identification server when said

representation is a new representation.”

Cusson further teaches a cache miss accelerator that speeds up the response time for instances when data indicated in the query is not in the cache database (provides a quick way to determine if the data is identifiable). (Cusson, col. 12, line 50 to col. 13, line 5). If the cache miss accelerator determines that the data is not in the cache database (not identifiable, a miss), the cache miss accelerator sends the query to the source database. (Cusson, col. 15, lines 13-19). Cusson teaches that the cache miss accelerator **always** sends the query to the source database if a miss is indicated (if it is determined that the data is unidentifiable). This is in contrast with claim 1, which recites, “wherein said representation is not sent to the at least one Second Tier identification server when said representation is a new representation.”

Patel teaches a system for caching content. In Patel, a caching server receives a request, and determines whether the request is for unclassified content. (Patel, par. [0021]; Fig. 1, blocks 106 and 108). If a previous request for the same unclassified content has been received, the current **request is not sent** to a content server. (Patel, par. [0023]; Fig. 1, blocks 108 and 150). If a previous request for the same unclassified content has not been received, the current **request is sent** to a content server. (Patel, par. [0022]; Fig. 1, blocks 106 and 136). Patel fails to teach at least one First Tier identification server ... to send said representation to at least one Second Tier identification server **when said representation is not a new representation**, wherein said representation is not sent to the at least one Second Tier identification server **when said representation is a new representation**,” as recited in claim 1. Accordingly, Patel fails to teach or suggest the features of claim 1 that are missing from AAPA and Cusson.

For the above reasons, none of AAPA, Cusson or Patel, alone or in combination, teaches or suggests all of the features included in the following language of claim 1:

... at least one First Tier identification server to receive said representation,



to determine whether said work from said representation is identifiable, to determine whether said representation is a new representation based on comparing the representation to previously received unidentified representations maintained in a data record when said work is not identifiable, wherein the representation is a new representation if the representation is not similar to a previously received unidentified representation, to add the representation to the data record when the representation is a new representation, and to send said representation to at least one Second Tier identification server when said representation is not a new representation, wherein said representation is not sent to the at least one Second Tier identification server when said representation is a new representation ...

Accordingly, Applicants respectfully submit that claim 1 and its dependent claims are patentable over Cusson, AAPA and Patel, and request that the rejection under 35 U.S.C. §102(e) be withdrawn.

Claim 30 includes the language, “when said received representation is not a new representation, sending said received representation to a Second Tier Identification server for identification, wherein said received representation is not sent to the at least one Second Tier identification server when said received representation is a new representation.” Claim 33 includes the language, “to send said representation to said Tier N+1 server for identification when said representation is similar to one of said previously received unidentified representations, wherein when the representation is not similar to one of said previously received unidentified representations, the representation is not sent to said Tier N+1 server.” Claim 39 includes the language, “means for sending said representation to a Second Tier Identification server for identification when said representation is similar to a previously received unidentified representation, wherein when the representation is not similar to the previously received unidentified representation, the representation is not sent to the Second Tier identification server.” Claim 42 includes the language, “when said representation is similar to the previously received unidentified representation, sending said received representation to a Second Tier Identification server for identification, wherein when the representation is not similar to the

previously received unidentified representation, the representation is not sent to the Second Tier identification server.” As discussed above, the combination of Cusson, Patel and AAPA fails to teach or disclose such limitations. Accordingly, Applicants respectfully submit that claims 30, 33, 39 and 42, and their corresponding dependent claims, are patentable over the presently cited art, and request that the rejection under 35 U.S.C. §102(e) be withdrawn.

With regards to claim 45, Examiner has indicated that the limitation of, “the at least one first tier identification server to add said representation to an index of unidentified representations if the representation is identified by the second tier identification server if said representation is not similar to any previously received unidentified representation,” is applicant admitted prior art. Applicants respectfully point out that the language identified by the Examiner is not the claim language of claim 45. Claim 45 recites, “the at least one First Tier identification server to add said representation to an index of unidentified representations if said representation is not similar to any previously received unidentified representation.” Additionally, Applicants respectfully disagree with Examiner's assertion that the features of claim 45 are AAPA. First, Examiner is citing Applicant's own detailed description against claim 45, which is improper. Moreover, the language of Applicant's detailed description cited by the Examiner does not even discuss maintaining an index of unidentified representations. Applicants direct Examiner to, for example, pages 21 and 22 of the detailed description for such a discussion.

Regarding claims 24-27, Examiner has stated that these claims are all disclosed in AAPA. Specifically, Examiner cites page 5, lines 8-10 of the background section of the present application as disclosing the features of claims 24-27. Page 5, lines 8-10 recites, “if a match is made, typically the module 102 will keep a record of all matches made during a predetermined period of time. For example, the module 102 may keep a record of song titles detected during a 24 hour period.” The cited passage discloses storing a record of matches. The cited passage

does not disclose providing representations to an ID server, much less providing representations to an ID server at any predetermined time interval. Nor does the background section of the current application elsewhere describe such features. Accordingly, Applicants respectfully submit that the features of claims 24-27 are not disclosed by AAPA, and request that Examiner remove the rejection to claims 24-27 or provide a reference that teaches the features recited in these claims.

Regarding claim 28, Examiner has stated that this claim is disclosed in AAPA. Specifically, Examiner cites page 2, lines 1-5 of the background section of the present application as disclosing the features of claim 28. The cited passage discloses receiving a media stream. The cited passage does not disclose providing representations to an ID server, much less providing representations to an ID server based on an out of band event. Nor does the background section of the current application elsewhere describe such features. Accordingly, Applicants respectfully submit that the features of claim 28 are not disclosed by AAPA, and request that Examiner remove the rejection to claim 28 or provide a reference that teaches the features recited in this claim.

## **Conclusion**

In view of the above remarks, a specific discussion of the dependent claims is considered to be unnecessary. Therefore, Applicants' silence regarding any dependent claim is not to be interpreted as agreement with, or acquiescence to, the rejection of such claim or as waiving any argument regarding that claim.

Applicant respectfully submits that the rejections have been overcome, and requests the withdrawal of the rejections. Applicant respectfully requests reconsideration of the application.

If the Examiner has any questions regarding this response, the Examiner is invited to contact Benjamin Kimes at (408) 720-8300.

## **Deposit Account Authorization**

Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due. Furthermore, if an extension is required, then Applicant hereby requests such extension.

Respectfully submitted,  
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